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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
HELEN PATENAUDE,	:	LS0306042REB
RESPONDENT.	:	

The State of Wisconsin, Real Estate Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 25th day of March, 2004.

Richard Kollmansberger
Chairperson
Real Estate Board

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY	
PROCEEDINGS AGAINST	PROPOSED DECISION
	LS0306042REB
HELEN R. PATENAUDE	
d/b/a RIVER REALTY	
RESPONDENT.	

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Helen R. Patenaude
147 Quincy Street
Oconto, WI 54153

Real Estate Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on June 4, 2003. The Respondent did not file an Answer to the Complaint. The hearing was held on August 6, 2003. Attorney Kelly Cochrane appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Ms. Patenaude did not appear at the hearing. The hearing transcript was filed on August 22, 2003.

Based upon the record herein, the Administrative Law Judge recommends that the Real Estate Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Helen R. Patenaude, d.o.b. 11/13/42, was first licensed as a real estate broker by the state of Wisconsin on July 20, 1989 with license #43554.

2. Ms. Patenaude's last-known address on file with the Department of Regulation and Licensing is 147 Quincy St., Oconto, WI 54153.

3. On or about June 13, 2001, the Department of Regulation and Licensing ("Department") received a complaint made by Mr. VandenBloomer regarding the Respondent. The Department thereafter opened Case No. 01 REB 145 for investigation against Respondent.

4. On or about August 28, 2001, the Department sent a letter to Respondent requesting Respondent's documents relating to Mr. VandenBloomer's complaint. That letter was mailed to Respondent's last-known address, as indicated in the records of the Department. The Department did not receive an answer of any kind from Respondent regarding that request.

5. On or about October 19, 2001, the Department sent a second letter to Respondent again requesting Respondent's documents relating to Mr. VandenBloomer's complaint. That letter was sent by certified mail to Respondent's last-known address, as indicated in the records of the Department. The Department did not receive an answer from Respondent regarding that request.

6. On or about May 15, 2002, the Department sent a third letter to Respondent requesting Respondent's documents relating to Mr. VandenBloomer's complaint. That letter was sent by certified mail to Respondent's last-known address, as indicated in the records of the Department.

7. On or about May 28, 2002, the Department received the returned envelope which contained the May 15, 2002 letter sent to the Respondent relating to Mr. VandenBloomer's complaint. On the returned envelope, Respondent's name and last-known address had been marked over with black ink; stamped "No Forwarding Address", and marked with an arrow that pointed to the Department's return address.

8. Respondent is also licensed as a certified residential appraiser in the State of Wisconsin, license #9-932, which was first granted on 11/30/94.

9. Respondent's last-known address on file with the Department of Regulation and Licensing as a certified residential appraiser is 109 Congress St., Oconto, WI 54153.

10. On or about June 21, 2002, the Department sent a fourth letter to Respondent again requesting Respondent's documents relating to Mr. VandenBloomer's complaint. That letter was sent by certified mail to Respondent's last-known address as a certified residential appraiser, as indicated in the records of the Department.

11. On or about July 15, 2002, the Department received the returned envelope which contained the June 21, 2002 letter sent to the Respondent relating to Mr. VandenBloomer's complaint. The following information was stamped on the returned envelope: "Unclaimed" "Returned to Sender".

12. On or about April 18, 2002, the Department received a complaint made by Ms. Kemm ("Kemni") regarding the Respondent. The Department thereafter opened Case No. 02 REB 081 for investigation against Respondent.

13. On or about August 7, 2002, Betsy Wood, an investigator with the Department of Regulation and Licensing, telephoned the numbers associated with Respondent's home address. Investigator Wood recorded in a memorandum, dated August 7, 2002, that Respondent's home telephone number was not in service. Investigator Wood then call Respondent's place of business, River Realty. She recorded the following in the August 7, 2002, memorandum:

The first time the line was busy. The second time, the phone rang and was answered by what seemed to be a woman. I asked if this was Helen Patenaude and the answer was yes. I then identified myself as a DRL investigator and told her that I have been sending her letters that had been returned, but I needed to hear from her. There was silence, then the woman said I had the wrong number. I said I was trying to reach Helen Patenaude with River Realty. While I was speaking, she said something about a telemarketer and hung up. I called back immediately and the phone was answered by a series of fax machine beeps. ...

14. On or about August 7, 2002, the Department requested service of a subpoena upon Respondent by the Oconto County Sheriff's Department. The subpoena duces tecum, which contained a reference to both the Congress Street and the Quincy Street address, demanded that the Respondent appear at the Department's office to produce for inspection all documents relating to the complaints filed by Mr. VandenBloomer and Ms. Kemm ("Kemni").

15. On or about August 27, 2002, Investigator Wood telephoned the Oconto County Sheriff's Department and spoke to Karen regarding the request for service for the subpoena on Respondent. Karen informed Investigator Wood that several attempts were made to serve the subpoena [at the Quincy Street address], but nobody came to the door even when there were cars in the parking lot. Karen also informed Investigator Wood that the deputy who tried to serve the subpoena on Ms. Patenaude on August 22, 2002, found a note on the door indicating that they (the occupants) were "gone till 8-31-02".

16. On or about August 26, 2002, the Department received an Affidavit of Service from the Oconto County Sheriff's Department with respect to the attempts made to serve the subpoena on Respondent at the Quincy Street address.

17. On or about September 17, 2002, the Department again requested service of a subpoena upon Respondent by the Oconto County Sheriff's Department. The subpoena duces tecum, which contained a reference to both the Congress Street and the Quincy Street address, demanded appearance by Respondent at the Department's office to produce for inspection all documents relating to the complaints filed by Mr. VandenBloomer and Ms. Kemm ("Kemni").

18. On or about October 9, 2002, the Department received documentation from the Oconto County Sheriff's Department with respect to the attempts made to serve Respondent at the Quincy Street address. The document from the Oconto County Sheriff Department states the following:

Remarks: Attempts at Service: 9/24/01 1:32 PM; 9/25/02 1:20 PM; 9/30/02 5:34 PM. Helen Patenaude will not answer the door. Paperwork returned unserved.

19. On or about September 9, 2002, the Department received a complaint made by Mr. Tilque regarding the

Respondent. The Department thereafter opened Case No. 02 REB 192 for investigation against Respondent.

20. On or about December 17, 2002, the Department sent a letter to Respondent requesting Respondent's documents relating the complaints filed by Mr. Tilque. That letter was mailed to Respondent's last-known address as a certified residential appraiser, as indicated in the records of the Department. That address was also referred to as the contact address for Respondent in the complaint filed by Mr. Tilque.

21. On or about January 15, 2003, the Department received the returned envelope which contained the December 17, 2002 letter that was sent to the Respondent relating to Mr. Tilque's complaint. Information on the returned envelope indicates the following: 1) The Respondent's name and last-known address was marked over with black ink; 2) the words "No Forwarding Address" was stamped on the front of the envelope; 3) the words "Office Closed 3 yrs." was hand written on the front of the envelope, and 4) an arrow was drawn on the front of the envelope pointing to the Department's return address.

22. The Department has not received any response from Respondent with regard to its request for information relating to the complaint filed by Mr. Tilque.

23. The Department has not received any notice of change in address for Respondent.

24. Respondent did not file an Answer to the Complaint and did not appear at the hearing held in this matter.

CONCLUSIONS OF LAW

1. The Real Estate Board has jurisdiction in this matter pursuant to s. 452.14 (3) Wis. Stats.

2. Respondent's failure to make records available to the Department of Regulation for inspection and copying, as described in Findings of Fact 3-22 herein, constitutes a violation of s. RL 15.04, Wis. Adm. Code, and s. 452.14 (3) (i), Wis. Stats.

3. By failing to file an Answer to the Complaint and failing to appear at the hearing held in this matter, respondent is in default under s. RL 2.14 Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license (#43554) of HELEN R. PATENAUDE, to practice as a real estate broker, be and hereby is REVOKED.

IT IS FURTHER ORDERED that pursuant to s. 440.22, Wis. Stats., the cost of this proceeding shall be assessed against respondent, and shall be payable to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed on behalf of the Real Estate Board.

OPINION

The Division of Enforcement alleges in its Complaint that by engaging in the conduct described therein, respondent violated s. RL 15.04, Code. The evidence presented establishes that the violations occurred.

I. Applicable Law

452.14 Investigation and discipline of licensees.

(3) Disciplinary proceedings shall be conducted by the board according to rules adopted under s. 440.03 (1). The board may revoke, suspend or limit any broker's, salesperson's or time-share

salesperson's license or registration, or reprimand the holder of the license or registration, if it finds that the holder of the license or registration has:

(i) Demonstrated incompetency to act as a broker, salesperson or time-share salesperson in a manner which safeguards the interests of the public;

RL 15.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 452.07 and 452.14 (3) (h) and (i), Stats.

RL 15.04 Retention of records. A broker shall retain for at least 3 years exact and complete copies of all listing contracts, offers to purchase, leases, closing statements, deposit receipts, cancelled checks, trust account records and other documents or correspondence received or prepared by the broker in connection with any transaction. The retention period shall run from the date of closing of the transaction or, if the transaction has not been consummated, from the date of listing. The broker shall make these records available for inspection and copying by the department. If the records are retained outside this state, the broker shall, upon request of the department, promptly send exact and complete copies to the department.

II. Evidence Presented

Ms. Patenaude has been licensed as a real estate broker since July 20, 1989. In June 2001, the Department of Regulation and Licensing, Division of Enforcement, received a complaint made by Mr. VandenBloomer regarding a real estate transaction in 1999 in which Ms. Patenaude, d/b/a River Realty, acted as real estate broker. In August 2001, the Department sent a letter to Ms. Patenaude requesting that she provide a detailed written response to the allegations contained in the complaint. The Department also requested that Ms. Patenaude provide a copy of her entire file in regards to the transaction, including, but not limited to, Listing Contract, Offer to Purchase, correspondence, etc. That letter was sent to 147 Quincy Street, Oconto, Wisconsin. The Department did not receive a response to the letter from Ms. Patenaude.

On or about October 19, 2001, the Department sent a second letter, by certified mail, requesting that Ms. Patenaude respond to the complaint and provide the documents previously requested. Ms. Patenaude did not respond to the letter. The Department sent a third letter, also by certified mail, to Ms. Patenaude on May 15, 2002. That letter was returned with a notation stamped on the face of the envelope which states: "No Forwarding Address". A fourth letter was sent to Ms. Patenaude at the 109 Congress Street address in Oconto, which is the last known address on file with the Department for her certified residential appraiser credential. That letter was returned to the Department with a notation stamped on the face of the envelope which states: "Unclaimed" Return to Sender".

In April 2002, the Department received a complaint made by Ms. Kemm ("Kemni") regarding an incident that occurred in March 1999, in an apartment building that Ms. Patenaude managed. In August 2002, Betsy Wood, an Investigator with the Department of Regulation and Licensing attempted to reach Ms. Patenaude by telephone. Ms. Wood first telephoned Ms. Patenaude at the number associated with her home address. That number was not in service. Then, she called Ms. Patenaude at the number for River Realty. Ms. Wood recorded the following in a memorandum dated August 7, 2002:

The first time the line was busy. The second time, the phone rang and was answered by what seemed to be a woman. I asked if this was Helen Patenaude and the answer was yes. I then identified myself as a DRL investigator and told her that I have been sending her letters that had been returned, but I needed to hear from her. There was silence, then

the woman said I had the wrong number. I said I was trying to reach Helen Patenaude with River Realty. While I was speaking, she said something about a telemarketer and hung up. I called back immediately and the phone was answered by a series of fax machine beeps. ...

Thereafter, the Department contacted the Sheriff Department in Oconto County to request service of a subpoena duces tecum on Ms. Patenaude at the Congress Street address or the Quincy Street address. The subpoena requested that Ms. Patenaude provide documents related to the VandenBloomer and Kemm complaints. The Sheriff Department made numerous attempts to locate Ms. Patenaude at the Quincy Street address in order to serve her with the subpoena, but was unsuccessful.

In September 2002, the Department received a complaint made by Mr. Tilque regarding the upkeep and maintenance of a property managed by Ms. Patenaude, d/b/a River Realty. On or about December 17, 2002, the Department sent a letter to Ms. Patenaude at the Quincy Street address requesting that she respond to the complaint and that she provide the complete file for the property. The Department did not receive a response to the letter from Ms. Patenaude. On or about January 15, 2003, the Department received the returned envelope which contained the December 17, 2002 letter that was sent to the Respondent relating to Mr. Tilque's complaint. Information on the returned envelope indicates the following: 1) The Respondent's name and last-known address was marked over with black ink; 2) the words "No Forwarding Address" was stamped on the front of the envelope; 3) the words "Office Closed 3 yrs." was hand written on the front of the envelope, and 4) an arrow was drawn on the front of the envelope pointing to the Department's return address.

III. Discipline

Having found that Ms. Patenaude violated laws relating to practice as a real estate broker, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Real Estate Board is authorized under s. 452.14 (3), Stats., to revoke, suspend or limit any broker's, salesperson's or time-share salesperson's license or registration, or reprimand the holder of the license or registration, if it finds that the licensee or registrant has engaged in the type of conduct prohibited by the statutes.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

The Division of Enforcement recommends that Ms. Patenaude's license as a real estate broker be revoked and that she be ordered to pay the costs of this proceeding.

Based upon the evidence presented, the Administrative Law Judge recommends that Ms. Patenaude's license as a real estate broker be revoked, and that she be ordered to pay the costs of the proceeding. This measure is designed primarily to assure protection of the public. The evidence in the record establishes that Ms. Patenaude failed to produce records to the Department relating to three complaints. The Department made many unsuccessful attempts to obtain the documents from Ms. Patenaude. Attempts to contact Ms. Patenaude were all made by communications sent to Ms. Patenaude's last known addresses on file with the Department. It is also important to note that when Investigator Wood telephoned River Realty on August 7, 2002, she asked the person who answered the telephone whether the person was Helen Patenaude. Investigator Wood recorded in her memorandum, dated August 7, 2002, that the person answered "yes", indicating that she was Helen Patenaude. After Investigator Wood identified herself as an investigator with the Department of Regulation and Licensing, and stated that she had been sending letters that had been returned, there was silence. Then, according to the statement recorded in Investigator Wood's August 7, 2002 memorandum, the woman told Investigator Wood that she had the wrong number.

IV. Costs of the Proceeding

Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Board, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The Administrative Law Judge's recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist. In the Matter of Disciplinary Proceedings against M. Joanne Wolf, 165 Wis. 2d 1, 12, 476 N.W. 2d 878 (1991); In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III, 116 Wis. 2d 380, 385, 342 N.W. 2d 406 (1984).

Based upon the record herein, the Administrative Law Judge recommends that the Real Estate Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 6th day of February, 2004.

Respectfully submitted,

Ruby Jefferson-Moore
Administrative Law Judge